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Paper No. 12

MAY 25 2005

AGILENT TECHNOLOGIES
Legal Dept., Ms DL429
Intellectual Property Administration
P.O. Box 7599
Loveland, CO 80537

In re Application of
Steven Swenson et al.
Application No. 09/811,310
Filed: March 16, 2001
Attorney Docket No. 10010361-1

DECISION ON PETITION

This is a decision on the petition filed July 6, 2004, requesting that the holding of abandonment in the above-identified application be withdrawn, or in the alternative, to revive the application under 37 C.F.R. 1.137(b).

The petition to withdraw the holding of abandonment is GRANTED.

A restriction requirement Office action was mailed April 21, 2003, setting a thirty-day shortened statutory period for filing a response. In the absence of a response, the application was held abandoned and a Notice of Abandonment was mailed June 15, 2004.

Petitioner asserts that a response was timely filed by facsimile transmission on May 8, 2003. To support the assertion, petitioner submitted 1) a copy of a response entitled "Amendment" which bears a Certificate of Transmission under 37 C.F.R. § 1.8(a) dated May 8, 2003, 2) a copy of the sending unit's report confirming successful transmission of the Amendment on May 8, 2003 and 3) a declaration by Katherine Lopez Diangson stating that the "Amendment" was timely transmitted via facsimile on May 8, 2003.

A review of the application file record reveals that the above-identified response is not of record in the application file and cannot be located. However, 37 CFR § 1.8(b) provides for accepting a correspondence as being timely filed if it is transmitted in accordance with 37 CFR § 1.8(a), and is reproduced below:



In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the Patent and

Trademark Office, and the application is held to be abandoned or the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence: (1) informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence; (2) supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and (3) includes a statement which attests on a personal knowledge basis or to the satisfaction of the Commissioner to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

The petition, meets the conditions of 37 CFR § 1.8(b) to establish the previous timely filing of the response.

The petition and fee paid to revive the application for unintentional abandonment under 37 C.F.R. 1.137(b) is unnecessary. The request for refund must be submitted in writing to the Office of Finance and accompanied by a copy of this decision.

The application file is being forwarded to the technical support staff for processing the Amendment. From there, it will be returned to the examiner for further prosecution.

Richard K. Seidel, Director
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